

# Wisconsin Department of Agriculture, Trade and Consumer Protection

## Initial Regulatory Flexibility Analysis

**Rule Subject:** Wisconsin Farmland Preservation Program  
**Adm. Code Reference:** ATCP 49  
**Rules Clearinghouse #:** Not yet assigned  
**DATCP Docket #:** 12-R-03

### *Rule Summary*

This rule interprets the Wisconsin Farmland Preservation Program administered by the Department of Agriculture, Trade and Consumer Protection (“DATCP”). Among other things, this rule does all of the following:

#### **General**

- Creates ch. ATCP 49.
- Adds to definitions listed under s. 91.01, Stats., and further clarifies certain terms in ch. 91.
- Provides guidance for applying for and receiving certification of farmland preservation plans and ordinances.
- Specifies types of ordinance amendments for which certification is required under s. 91.36 (8) (b) 3, Stats.
- Authorizes additional uses allowed in a farmland preservation zoning district.
- Specifies information required in an application for a farmland preservation agreement under s. 91.64 (2) (h), Stats.

#### **Definitions**

- Clarifies types of uses that may be listed by a political subdivision as accessory uses and agriculture-related uses.
- Defines crops and forest management.
- Adds a definition of base farm tract to provide political subdivisions flexibility in administering this density restriction if they choose to utilize it.

#### **Farmland Preservation Plans**

- Clarifies that a county has one year after the certification expiration date to have its farmland preservation plan certified by the department.
- Clarifies when counties may request an extension to the expiration of their farmland preservation plan to facilitate coordination with other planning and zoning efforts that may be occurring in the county.
- Clarifies that any amendment to a certified farmland preservation plan must be

- submitted to the department for certification.
- Clarifies that the rationale used for identifying the farmland preservation area must be based on objective criteria. Describes the relationship between the farmland preservation plan and any county's comprehensive plan.
- Provides technical specifications for the farmland preservation plan map and states that the county must provide the department with the data used to create the map.

### **Farmland Preservation Zoning**

- Clarifies that nonfarm residences existing at the time an ordinance is certified may be considered permitted uses rather than prior nonconforming uses.
- Authorizes single-family nonfarm dwellings as conditional uses subject to density restrictions that are as restrictive, or more restrictive, than the density standards under ch. 91, Stats.
- Describes the types of uses that would qualify as governmental, institutional, religious, or nonprofit community uses.
- Clarifies that an ordinance certification expires according to the statutory schedule in s. 91.34, Stats., and a political subdivision has a year after the certification expiration date to have its ordinance certified by the department to prevent landowners from losing eligibility to collect farmland preservation tax credits.
- Clarifies that local governments may request an extension to the expiration of their farmland preservation zoning ordinance to facilitate coordination with other planning and zoning efforts that may be occurring in the town or county.
- Describes the relationship between a political subdivision's farmland preservation zoning ordinance and the county's farmland preservation plan.
- Provides technical specifications for the farmland preservation zoning map and states that the political subdivision must provide the department with the data used to create the map.
- Specifies that the department may withdraw certification of an ordinance if the county farmland preservation plan expires or if the political subdivision adopts an ordinance that fails to comply with ch. 91, Stats.
- Specifies when an amendment to a farmland preservation zoning ordinance must be submitted to the department for certification.

### **Farmland Preservation Agreements**

This rule:

- Requires landowners to include in an application for a farmland preservation agreement those lands that the landowner owns yet intends to exclude from coverage under the agreement.

### *Small Business Affected*

This rule will have a generally positive impact on agriculture-related businesses. This rule affects businesses in the following ways:

#### **Farmland Preservation Plans**

- As part of the farmland preservation planning process, ch. 91, Stats., counties are required to describe the rationale used for determining the farmland preservation area. This rule clarifies that the rationale must be based on objective criteria related to characteristics of the land parcels themselves, including the proximity of parcels to agricultural infrastructure and the historical use of the land for agriculture-related purposes. As part of the farmland preservation planning process, counties are required to inventory and evaluate agriculture-related businesses and services, including agricultural production and enterprises related to agriculture. This process helps to ensure that agriculture-related businesses can be measured within the community and aid counties as they continue to plan for the presence of these businesses.

#### **Farmland Preservation Zoning**

- Chapter 91, Stats., allows a political subdivision to locate accessory and agriculture-related uses within a certified farmland preservation district. This rule clarifies the types of uses that may be considered accessory and agriculture-related.
- Accessory uses, under the rule, include facilities for storing, processing, selling, and housing agricultural products. Such uses primarily support agricultural activities occurring on the farm. These uses can make it possible for a farm to generate income through direct-to-consumer sales, such as a roadside farm, or can add value to a product produced on the farm, such as a cheese processing facility. The rule also clarifies that an accessory use can include those uses that may generate income yet do not conflict with (or may be enhanced by) the farm operation. Listed uses include crop mazes, agricultural tourism, and you-pick operations. The clarification of accessory use facilitates the inclusion of agricultural businesses, particularly small agricultural businesses, within the farmland preservation district.
- The rule also clarifies that agriculture-related uses include facilities that support agriculture even though the use itself may not be located on a farm. Such uses include facilities that primarily provide agricultural supplies, agricultural equipment, fertilizers, pesticides or other agricultural inputs, or other agricultural services directly to farms. These uses also include manure digesters, facilities that slaughter livestock, and agricultural processing plants. The rule clarifies that political subdivisions may include within a farmland preservation zoning district

businesses that support agriculture. Allowing such businesses to locate within a farmland preservation district helps provide these businesses with a potential customer base and may add additional economic certainty to farmers with land in the certified farmland preservation district.

### **Farmland Preservation Agreements**

- This rule requires landowners who submit an application to the department for a farmland preservation agreement to include in the application all lands owned within an Agricultural Enterprise Area that will not be covered by the agreement. This requirement ensures that landowners claiming tax credits under the agreement will not reserve land for purposes that conflict with the preservation of farmland. This in turn provides added certainty to neighboring farmers that conflicting uses will not threaten the continued agricultural production on their land.

### ***Reporting, Bookkeeping and other Procedures***

The proposed rule does not regulate any small businesses and thus there are no reporting, bookkeeping or other procedures in the proposed rule for small businesses.

### ***Professional Skills Required***

The proposed rule does not regulate any small businesses and thus there is no profession skill required for small businesses.

### ***Accommodation for Small Business***

Many of the businesses affected by this rule are “small businesses.” This rule does not make special exceptions for small businesses because the farmland preservation program encompasses agricultural operations of all sizes.

This rule includes provisions that will benefit large and small businesses alike. For example, this rule:

- Requires counties to consider agricultural businesses, regardless of size, when determining which lands to plan for farmland preservation.
- Clarifies that certain activities that support and enhance agricultural uses may be located within a farmland preservation zoning district. These activities may include supplemental business ventures that can help support a small agricultural operation, such as agricultural tourism or seasonal activities.

***Conclusion***

This rule will generally benefit affected businesses, including “small businesses.” Negative effects, if any, will be few and limited. This rule will not have a significant adverse effect on “small business,” and is not subject to the delayed “small business” effective date provided in s. 227.22(2)(e), Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
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Division of Agricultural Resource Management